

## § 26.48

(c) The Joint Sectoral Committee's functions will include:

(1) Making a joint assessment of the equivalence of conformity assessment bodies (CAB's);

(2) Developing and maintaining the list of equivalent CAB's, including any limitation in terms of their scope of activities and communicating the list to all authorities and the Joint Committee described in subpart C of this part;

(3) Providing a forum to discuss issues relating to this subpart, including concerns that a CAB may no longer be equivalent and opportunity to review product coverage; and

(4) Consideration of the issue of suspension.

### § 26.48 Harmonization.

During both the transitional and operational phases of this subpart, both parties intend to continue to participate in the activities of the Global Harmonization Task Force (GHTF) and utilize the results of those activities to the extent possible. Such participation involves developing and reviewing documents developed by the GHTF and jointly determining whether they are applicable to the implementation of this subpart.

### § 26.49 Regulatory cooperation.

(a) The parties and authorities shall inform and consult with one another, as permitted by law, of proposals to introduce new controls or to change existing technical regulations or inspection procedures and to provide the opportunity to comment on such proposals.

(b) The parties shall notify each other in writing of any changes to appendix A of this subpart.

### § 26.50 Alert system and exchange of postmarket vigilance reports.

(a) An alert system will be set up during the transition period and maintained thereafter by which the parties will notify each other when there is an immediate danger to public health. Elements of such a system will be described in an appendix F of this subpart. As part of that system, each party shall notify the other party of any confirmed problem reports, correc-

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tive actions, or recalls. These reports are regarded as part of ongoing investigations.

(b) Contact points will be agreed between both parties to permit authorities to be made aware with the appropriate speed in case of quality defect, batch recalls, counterfeiting and other problems concerning quality, which could necessitate additional controls or suspension of the distribution of the product.

### APPENDIX A TO SUBPART B OF PART 26— RELEVANT LEGISLATION, REGULATIONS, AND PROCEDURES.

1. For the European Community (EC) the following legislation applies to § 26.42(a) of this subpart:

[Copies of EC documents may be obtained from the European Document Research, 1100 17th St. NW., suite 301, Washington, DC 20036.]

a. Council Directive 90/385/EEC of 20 June 1990 on active implantable medical devices

OJ No. L 189, 20.7. 1990, p. 17. Conformity assessment procedures.

Annex 2 (with the exception of section 4)

Annex 4

Annex 5

b. Council Directive 93/42/EEC of 14 June 1993 on Medical Devices OJ No. L 169, 12.7.1993, p.1. Conformity assessment procedures.

Annex 2 (with the exception of section 4)

Annex 3

Annex 4

Annex 5

Annex 6

2. For the United States, the following legislation applies to § 26.32(a):

[Copies of FDA documents may be obtained from the Government Printing Office, 1510 H St. NW., Washington, DC 20005. FDA documents may be viewed on FDA's Internet web site at <http://www.fda.gov>.]

a. The Federal Food, Drug and Cosmetic Act, 21 U.S.C. 321 *et seq.*

b. The Public Health Service Act, 42 U.S.C. 201 *et seq.*

c. Regulations of the United States Food and Drug Administration found at 21 CFR, in particular, Parts 800 to 1299.

d. Medical Devices; Third Party Review of Selected Premarket Notifications; Pilot Program, 61 FR 14789-14796 (April 3, 1996).

e. Draft Guidance Document on Accredited Persons Program, 63 FR 28392 (May 22, 1998).

f. Draft Guidance for Staff, Industry and Third Parties, Third Party Programs under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the

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European Community (MRA), 63 FR 36240 (July 2, 1998).

g. Guidance Document on Use of Standards, 63 FR 9561 (February 25, 1998).

### APPENDIX B TO SUBPART B OF PART 26— SCOPE OF PRODUCT COVERAGE

#### 1. Initial Coverage of the Transition Period

Upon entry into force of this subpart as described in §26.80 (it is understood that the date of entry into force will not occur prior to June 1, 1998, unless the parties decide otherwise), products qualifying for the transitional arrangements under this subpart include:

- a. All Class I products requiring premarket evaluations in the United States—see Table 1.
- b. Those Class II products listed in Table 2.

#### 2. During the Transition Period

The parties will jointly identify additional product groups, including their related accessories, in line with their respective priorities as follows:

- a. Those for which review may be based primarily on written guidance which the parties will use their best efforts to prepare expeditiously; and
- b. Those for which review may be based primarily on international standards, in

order for the parties to gain the requisite experience.

The corresponding additional product lists will be phased in on an annual basis. The parties may consult with industry and other interested parties in determining which products will be added.

#### 3. Commencement of the Operational Period

- a. At the commencement of the operational period, product coverage shall extend to all Class I/II products covered during the transition period.
- b. FDA will expand the program to categories of Class II devices as is consistent with the results of the pilot, and with FDA's ability to write guidance documents if the device pilot for the third party review of medical devices is successful. The MRA will cover to the maximum extent feasible all Class II devices listed in Table 3 for which FDA-accredited third party review is available in the United States.

4. Unless explicitly included by joint decision of the parties, this part does not cover any U.S. Class II-tier 3 or any Class III product under either system.

[The lists of medical devices included in these tables are subject to change as a result of the Food and Drug Administration Modernization Act of 1997.]

TABLE 1—CLASS I PRODUCTS REQUIRING PREMARKET EVALUATIONS IN THE UNITED STATES, INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD <sup>1</sup>

21 CFR Section No.	Regulation Name
	Product Code—Device Name
<i>Anesthesiology Panel (21 CFR part 868)</i>	
868.1910	Esophageal Stethoscope
	BZW—Stethoscope, Esophageal
868.5620	Breathing Mouthpiece
	BYP—Mouthpiece, Breathing
868.5640	Medicinal Nonventilatory Nebulizer (Atomizer)
	CCQ—Nebulizer, Medicinal, Nonventilatory (Atomizer)
868.5675	Rebreathing Device
	BYW—Device, Rebreathing
868.5700	Nonpowered Oxygen Tent
	FOG—Hood, Oxygen, Infant
	BYL—Tent, Oxygen
868.6810	Tracheobronchial Suction Catheter
	BSY—Catheters, Suction, Tracheobronchial
<i>Cardiovascular Panel</i>	
(None)	
<i>Dental Panel (21 CFR part 872)</i>	
872.3400	Karaya and Sodium Borate With or Without Acacia Denture Adhesive
	KOM—Adhesive, Denture, Acacia and Karaya With Sodium Borate
872.3700	Dental Mercury (U.S.P.)
	ELY—Mercury
872.4200	Dental Handpiece and Accessories
	EBW—Controller, Food, Handpiece and Cord
	EFB—Handpiece, Air-Powered, Dental
	EFA—Handpiece, Belt and/or Gear Driven, Dental
	EGS—Handpiece, Contra- and Right-Angle Attachment, Dental
	EKX—Handpiece, Direct Drive, AC-Powered